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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

20 JUL 14 PM 12:17

DEPUTY CLERK

N7

STRASBURGER & PRICE, LLP,

PLAINTIFF,

v.

FRED K. WHISENHUNT, ELIZABETH
KAY SPAIN, JOYCE K. WHISENHUNT,
VICKI D. KAY, BRENT D. KAY, PATRICIA
K. KARPFF, BRUCE WHISENHUNT, MARY
ANN CLIFTON CHANCELLOR, BLAKE
CLIFTON, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE FOR
THE ESTATE OF LUCILE K. CLIFTON,
JILL LYNN WAGGETT, ROBERT
WAGGETT, JR., AND THE UNITED
STATES OF AMERICA

DEFENDANTS.

CIVIL ACTION NO. _____

3-10CV1373-L

COMPLAINT IN INTERPLEADER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Strasburger & Price, LLP, Plaintiff, and files this Complaint in Interpleader and in support thereof would respectfully show the Court as follows:

I.
PARTIES

1. Plaintiff Strasburger & Price, LLP is a limited liability partnership organized under the laws of the State of Texas with its principal place of business located in Dallas County, Texas.

2. Defendant Fred K. Whisenhunt, as Independent Executor of the Estate of Jacob Kay, and individually, is an individual residing in Smith County, Texas.

3. Defendant Elizabeth Kay Spain is an individual residing in Cook County, Illinois.

4. Defendant Joyce K. Whisenhunt is an individual residing in Smith County, Texas.

5. Defendant Blake Clifton, as Personal Representative to the Heirs of Lucile K. Clifton, and individually, is an individual residing in Boone County, Missouri.

6. Defendant Vicki D. Kay is an individual residing in Smith County, Texas.

7. Defendant Brent D. Kay is an individual residing in Smith County, Texas.

8. Defendant Patricia K. Karpf is an individual residing in Cook County, Illinois.

9. Defendant Bruce Whisenhunt is an individual residing in Denver County, Colorado.

10. Defendant Mary Ann Clifton Chancellor is an individual residing in Ellis County, Texas.

11. Defendant Jill Lynn Waggett is an individual residing in Mercer County, New Jersey.

12. Defendant Robert Waggett, Jr. is an individual residing in Galveston County, Texas.

13. Defendant is the United States of America.

II. **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this interpleader action pursuant to 28 U.S.C. §1335 and Federal Rule of Civil Procedure 22.

15. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. §1397 because one or more claimants reside in the Northern District of Texas.

III. **FACTUAL ALLEGATIONS**

16. Dr. Jacob L. Kay ("Decedent") died testate on August 16, 2002. His Last Will and Testament ("Will"), dated September 15, 2000, provided for bequests of money and other personal property to the Defendants and others. The Will named Fred Whisenhunt as the Independent Executor.

17. The Will was filed with the Probate Court No. 3 of Dallas County, Texas, in Cause Number 02-3777-P/3, entitled Estate of Jacob L. Kay, Deceased. The Will was admitted to probate by said Probate Court on November 11, 2002, and Fred Whisenhunt was appointed and qualified as the Independent Executor ("Executor") on November 11, 2002.

18. Since his appointment, Executor has administered the estate of the Decedent. Except for the payment of taxes, Executor has completed the administration

of the estate. A dispute existed between the parties regarding the administration of the estate.

19. On April 4, 2008, Defendants entered into a Family Settlement and Distribution Agreement ("Agreement"). Assets of the estate in the sum of \$190,000.00 were distributed on or before April 11, 2008.

20. Executor paid to Strasburger & Price ("Escrow Holder") the sum of \$101,379.00. The sum of \$6,000.00 was set aside to cover the cost of preparation of any income tax returns to be filed by Executor on behalf of the estate and for payment of income taxes due. The balance of said sum (\$95,379.00) was to be held by Escrow Holder until July 1, 2010 ("Escrow Termination Date") and was invested in a Certificate of Deposit issued by Frost National Bank, located in Dallas, Texas.

21. Per the Agreement, if, prior to the Escrow Termination Date, the Internal Revenue Service assessed any additional amount by reason of taxes, interest, and/or penalties against the Decedent's estate, the Escrow Holder is to utilize the proceeds set aside in said Certificate of Deposit, including any interest earned thereof, to pay and satisfy the claims of the Internal Revenue Service. After the Escrow Termination Date and/or satisfaction of any and all claims of the Internal Revenue Service which were assessed prior to that date, any sums remaining in the possession of the Escrow Holder by reason of the total sum paid to it, shall be divided into fifteen shares and paid to the following individuals:

- i. To ELIZABETH KAY SPAIN - 2 shares of the Residue
- ii. To JOYCE K. WHISENHUNT - 2 shares of the Residue

- iii. To the heirs of LUCILE K. CLIFTON - 2 shares of the Residue
- iv. To VICKI D. KAY - 1 share of the Residue
- v. To BRENT D. KAY - 1 share of the Residue
- vi. To PATRICIA K. (SPAIN) KARPFF - 1 share of the Residue
- vii. To FRED K. WHISENHUNT - 1 share of the Residue
- viii. To BRUCE WHISENHUNT - 1 share of the Residue
- ix. To MARY ANN CLIFTON CHANCELLOR - 1 share of the Residue
- x. To BLAKE CLIFTON - 1 share of the Residue
- xi. To JILL LYNN WAGGETT - 1 share of the Residue
- xii. To ROBERT WAGGETT, JR. - 1 share of the Residue

22. Upon information and belief, the Internal Revenue Service sent a Past Due Tax Statement notifying Executor that the sum of \$241,883.20 was due to the Internal Revenue Service by November 13, 2008. To Escrow Holder's knowledge and belief, no amount has been paid to date.

IV. GROUND FOR INTERPLEADER

23. Strasburger & Price is or may be subject to multiple liability with respect to the \$96,809.68 proceeds of the Certificate of Deposit because of rival claims by Defendants and the Internal Revenue Service.

24. The claims asserted by Defendants and the Internal Revenue Service are adverse and conflicting, and Strasburger & Price is unable to gain authorization from the Executor to release the funds to the Internal Revenue Service. Strasburger & Price is

therefore in the position of an innocent stakeholder faced with the possibility of multiple liability and incidental costs.

25. Strasburger & Price neither has nor claims any interest in the proceeds of the Certificate of Deposit. Strasburger & Price has at all times been willing to deliver such proceeds to the party or parties entitled to possession. Strasburger & Price did not unreasonably delay filing this action for interpleader.

26. Strasburger & Price has in no way colluded with any Defendant concerning the matters of this cause. Strasburger & Price has not been, and will not be, indemnified in any manner by any party. Strasburger & Price has filed this Complaint in Interpleader in order to avoid multiple liability and unnecessary suits and costs incidental thereto.

27. Strasburger & Price unconditionally offers and tenders and deposits with the Court along with this Complaint the sum of \$96,931.42, which represents the value of the Certificate of Deposit, including interest from the date of deposit until July 1, 2010. Once the proper beneficiary of the Certificate of Deposit proceeds is determined, Strasburger & Price respectfully requests an order directing the district clerk to distribute the Certificate of Deposit value to the lawful beneficiary.

**V.
ATTORNEY'S FEES**

28. Strasburger & Price further alleges that it is entitled to recover reasonable attorney's fees and costs incurred in bringing this Interpleader action in the amount of \$3500. A grant of such fees are within the discretion of the court, particularly where the

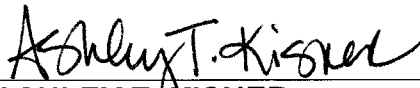
matter is brought be a disinterested stakeholder. *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 696 F.2d 359 (5th Cir. 1983).

29. Strasburger & Price has incurred a minimum of \$3500 in fees and costs preparing this Complaint, Appendix and Order, identifying and locating the parties in interest, preparing appropriate Summons for the Defendants, serving process, filing fees and miscellaneous costs, legal research regarding procedures for Interpleader actions, and otherwise pursuing this Interpleader action, as more fully set forth in the Affidavit of Ashley T. Kisner. See, Appendix, pages 1-2.

WHEREFORE, PREMISES CONSIDERED, Strasburger & Price prays that it be permitted and ordered to interplead into the registry of the Court the \$96,931.42 Certificate of Deposit value, that all Defendants claims to the proceeds of the Certificate of Deposit be interpleaded, and that Strasburger & Price have judgment as follows:

- a. That Strasburger & Price be released and discharged from all liability to Defendants on account of the matters relating to the proceeds of the Certificate of Deposit, and dismissed from this action;
- b. That Strasburger & Price have and recover reasonable attorney's fees together with all costs of court and expenses incurred by Strasburger & Price in this suit in the amount of \$3500 to be paid out of the proceeds of the Certificate of Deposit upon dismissal from this action; and
- c. That Strasburger & Price be awarded such other and further relief to which it may shows itself justly entitled.

Respectfully submitted,



ASHLEY T. KISNER

STATE BAR NO. 00791783

STRASBURGER & PRICE, LLP

901 Main Street, Suite 4400

Dallas, Texas 75202

(214)651-4300

(214)651-4303 Fax

ATTORNEY FOR PLAINTIFF

STRASBURGER & PRICE, LLP

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STRASBURGER & PRICE, LLP,

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WHISENHUNT, MARY ANN CLIFTON
CHANCELLOR, BLAKE CLIFTON,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE FOR THE ESTATE
OF LUCILE K. CLIFTON, JILL LYNN
WAGGETT, ROBERT WAGGETT, JR.,
AND THE UNITED STATES OF
AMERICA**

DEFENDANTS.

CIVIL ACTION NO. _____

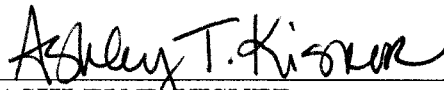
**APPENDIX IN SUPPORT OF PLAINTIFF'S
COMPLAINT IN INTERPLEADER**

In accordance with Local Rule 7.1, Strasburger & Price, LLP ("Strasburger") submits its Appendix in Support of Complaint in Interpleader of Plaintiff Strasburger. The following exhibit is relied upon by Strasburger in support of its Complaint in Interpleader, and the exhibit is incorporated therein.

The following exhibit is attached to this Appendix:

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT	APPENDIX PAGES
1	Affidavit of Ashley T. Kisner.	1-3

Respectfully submitted,

Handwritten signature of Ashley T. Kisner in black ink.

ASHLEY T. KISNER

STATE BAR NO. 00791783

STRASBURGER & PRICE, LLP

901 Main Street, Suite 4400

Dallas, Texas 75202

(214)651-4300

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ATTORNEY FOR PLAINTIFF

STRASBURGER & PRICE, LLP

IN THE UNITED STATES DISTRICT COURT
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AFFIDAVIT OF ASHLEY T. KISNER

STATE OF TEXAS

COUNTY OF DALLAS

Before me, the undersigned authority, on this day personally appeared **Ashley T. Kisner**,
who is known to me and who by me being duly sworn, stated as follows:

1. "My name is **Ashley T. Kisner**. I am over eighteen (18) years of age and am fully
competent to testify to the matters stated herein. I have personal knowledge of the facts stated herein
and they are all true and correct.

2. I am a partner at Strasburger & Price, LLP, and have practiced law in Dallas County, Texas for fifteen years. I am familiar with the hourly rates generally charged by lawyers in Dallas County. I have previously been engaged to work on litigation in estate matters.

3. Strasburger & Price, LLP attorneys who worked on this matter had billing rates ranging from \$465 to \$550 per hour. These hourly rates are reasonable in Dallas County for these types of matters.

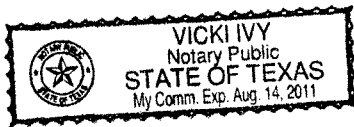
4. I am familiar with the work that comprised the approximately 7.5 hours of work performed by Strasburger & Price, LLP in this matter, or to be performed in the near future. That work included but was not limited to the following tasks: review of underlying documents related to the Certificate of Deposit and the amounts paid thereby, various communications to the Estate Executor, preparation and limited legal research on procedural aspects of the Complaint, preparation of the Complaint for filing and review of the local rules related to Interpleader, preparation of this Affidavit and Appendix in support of the request for fees and costs, location of addresses and preparation of service documentation for 12 defendants. Future work required by this action includes follow-up on service of process, and any additional work that may be required by the Court or by Defendants' pleadings. These tasks and the time taken to complete them (7+ hours) are reasonable and necessary under the circumstances of this matter.

5. In addition, Strasburger & Price, LLP has incurred or will incur costs in filing the Complaint, pursuing service of process on 12 defendants, and other miscellaneous fees and charges.

6. The total of \$3500 in fees and costs is reasonable and necessary.

Ashley T. Kisner
ASHLEY T. KISNER

SUBSCRIBED AND SWORN TO BEFORE ME, and given under my hand and seal of
office this 14th day of July, 2010.



Vicki Ivy
Notary Public in and for
Said County and State

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Strasburger & Price, LLP

DEFENDANTS

Fred K. Whisenhunt, Elizabeth Kay Spain, Joyce K. Whisenhunt, Vicki D. Kay, Brent D. Kay, Patricia K. Karpf, Bruce Whisenhunt, Mary Ann Clifton Chancellor, Blake Clifton, Individually and as personal rep for the Estate of Lucile K. Clifton, Jill Lynn Waggett, Robert Waggett, Jr., and the United States of America

(b) County of Residence of First Listed Plaintiff Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Smith

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ashley T. Kisner
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, TX 75202
214.651.4300

Attorneys (If Known)

RECEIVED
BY
JUL 14 2010
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

3-10CV1373-L

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff And One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Law <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1335 (Interpleader Statute)

Brief description of cause:

Interpleader of funds and recovery of attorneys' fees

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND
\$3500.00

CHECK YES only if demanded in complaint

JURY DEMAND:

☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY: None (See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Ashley T. Kisner

FOR OFFICE USE ONLY
312163.1/SPSA/16280/0101/070810

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____